Objection Deadline: February 7, 2011 at 4:00 p.m. (ET)
Hearing Date and Time: February 15, 2011 at 2:00 p.m. (ET)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
DBSD NORTH AMERICA, INC., *et al.*,[1]	)	Case No. 09-13061 (REG)
Debtors.	)	Jointly Administered

NOTICE OF FILING OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN REPLACEMENT POSTPETITION FINANCING ON A THIRD LIEN, SECURED, AND SUPERPRIORITY BASIS AND (B) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on February 1, 2011, the above-captioned debtors (collectively, the "**Debtors**") filed the Debtors' Motion for Entry of an Order (A) Authorizing

[1] The debtors in these chapter 11 cases, together with the last four digits of each debtor's federal tax identification number, are: DBSD North America, Inc. (6404); 3421554 Canada Inc. (4288); DBSD Satellite Management, LLC (3242); DBSD Satellite North America Limited (6400); DBSD Satellite Services G.P. (0437); DBSD Satellite Services Limited (8189); DBSD Services Limited (0168); New DBSD Satellite Services G.P. (4044); and SSG UK Limited (6399). The service address for each of the debtors is 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190.

the Debtors to Obtain Replacement Postpetition Financing on a Third Lien, Secured, and Superpriority Basis and (B) Granting Related Relief (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that a hearing (the "**Final DIP Hearing**") on the Motion will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom No. 621 of the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, on **February 15, 2011 at 2:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, shall conform to the Bankruptcy Rules and the Local Rules, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon (a) the Debtors and their counsel, (b) the Office of the United States Trustee for the Southern District of New York, (c) counsel to the official committee of unsecured creditors, (d) counsel to DISH Network Corporation, (e) counsel to the ad hoc committee of Senior Noteholders, (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, and (h) the parties in interest who have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002, so as to be actually received **no later than February 7, 2011 at 4:00 p.m. (prevailing Eastern Time)**. Only those responses that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the relief requested in the Motion as requested by the Debtors.

New York, New York
Dated: February 1, 2011

/s/ *Ryan Blaine Bennett*

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
DBSD NORTH AMERICA, INC., *et al.*,[1]	)	Case No. 09-13061 (REG)
Debtors.	)	Jointly Administered

DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN REPLACEMENT POSTPETITION FINANCING ON A THIRD LIEN, SECURED, AND SUPERPRIORITY BASIS AND (B) GRANTING RELATED RELIEF

[1] The debtors in these chapter 11 cases (the "**Chapter 11 Cases**"), together with the last four digits of each debtor's federal tax identification number, are: DBSD North America, Inc. (6404); 3421554 Canada Inc. (4288); DBSD Satellite Management, LLC (3242); DBSD Satellite North America Limited (6400); DBSD Satellite Services G.P. (0437); DBSD Satellite Services Limited (8189); DBSD Services Limited (0168); New DBSD Satellite Services G.P. (4044); and SSG UK Limited (6399). The service address for each of the Debtors is 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190.

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The above-captioned debtors (the "**Debtors**") hereby move the Court, pursuant to this motion (the "**Motion**"), for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Final DIP Order**"): (a) authorizing the Debtors to obtain replacement postpetition financing on a third lien, secured, and superpriority basis; and (b) granting related relief on a final basis. In support of this Motion, the Debtors respectfully state as follows.

Preliminary Statement

1. On December 6, 2010, the United States Court of Appeals for the Second Circuit (the "**Second Circuit**") reversed the decision of the United States District Court for the Southern District of New York (the "**District Court**"), which had affirmed the *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 547] entered by this Court on November 23, 2009 (the "**Existing Confirmation Order**"). The Second Circuit held that the "gift" being provided by the Senior Noteholders (as defined herein) to ICO Global Communications (Holdings) Limited ("**ICO Global**") under the Debtors' confirmed plan of reorganization (the "**Original Plan**") violated the absolute priority rule. As a consequence of the Second Circuit's order, on January 6, 2011, the Debtors filed a version of the Original Plan modified to remove the sole defect (the "**Modified Plan**"), and a motion to approve the Modified Plan.[2] At that time, modifying the Original Plan appeared to be the best option (and, indeed, the *only* option) available to the Debtors and their estates.

2. Following a status conference held before this Court on January 13, 2011, DISH Network Corporation ("**DISH**") approached the Debtors with a proposal to purchase the Debtors

[2] See Debtors' Motion for Entry of an Order (I) Approving Immaterial Modifications to the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code Without Need for Further Solicitation of Votes; and (II) Amending the Confirmation Order to Conform with and Apply to Such Modified Plan [Docket No. 878] (the "**Modified Plan Motion**").

through a plan of reorganization (the "**Alternate Plan**").[3] Specifically, DISH would provide more than $1 billion of value under the Alternate Plan and would receive 100% of the stock of the reorganized Debtors. Over the past two weeks, the Debtors have analyzed the Alternate Plan and deliberated over whether to maintain the status quo or pursue the Alternate Plan. After thoroughly considering both options—and after extensive negotiations that secured significant improvements and protections from DISH with respect to the Alternate Plan—the Debtors believe that the Alternate Plan will maximize the value of their estates and that it is incumbent upon the Debtors in the proper exercise of their fiduciary duties to pursue the Alternate Plan, instead of the Modified Plan, for the benefit of their creditors.

3. In connection with the Alternate Plan, DISH has agreed to extend replacement postpetition financing of up to $87.5 million on a junior secured basis (the "**DIP Facility**"). The DIP Facility will be used by the Debtors to pay off the Existing DIP Facility (as defined herein) in full and to fund capital expenses and expenses incurred in the chapter 11 cases.

4. Notably, DISH will provide the DIP Facility on a *junior secured basis*, thereby avoiding any priming disputes. If the estimated value of the Debtors' enterprise under the Modified Plan were accepted, the DIP Facility would be "out of the money" the moment it is funded, demonstrating both DISH's belief in the Debtors' value and its commitment to move forward with the Alternate Plan, fund the Debtors' emergence from chapter 11, and provide the reorganized Debtors with sufficient capital to execute a business plan. In addition to being secured by junior liens, the DIP Facility will mature on December 31, 2011 or, in certain instances, on March 31, 2012 (although the Debtors may exit from chapter 11 well before that),

[3] Contemporaneously with the filing of this Motion, the Debtors filed a motion to authorize and approve that certain Plan Investment Agreement, dated as of February 1, 2011, by and among the Debtors and DISH (the "**Investment Agreement**"). See Debtors' Motion for Entry of an Order Authorizing and Approving the Investment Agreement.

and it includes grace periods following events of default that are of sufficient duration to provide the Debtors with adequate opportunity to refinance the DIP Facility should it become necessary or desirable to do so.

5. The Debtors believe that the Alternate Plan will maximize value for all stakeholders. However, to pursue the Alternate Plan, the Debtors first must be authorized to enter into the DIP Facility. As set forth in greater detail herein, the Debtors respectfully submit that entering into the DIP Facility is an exercise of the Debtors' sound business judgment and should be approved.

Jurisdiction

6. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

7. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory bases for the relief requested herein are sections 105, 361, 363(b), and 364 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Rules for the Southern District of New York (the "**Local Rules**").

Relief Requested

9. By this Motion, the Debtors respectfully request entry of the Final DIP Order:

a. authorizing the Debtors to obtain postpetition financing on a third lien, secured, and superpriority basis under the DIP Facility on the terms and conditions set forth in that certain DIP Commitment Letter, dated as of February 1, 2011 (the "**Commitment Letter**") and the Summary of Terms and Conditions for Proposed Debtor in Possession Financing Facility, attached as Exhibit A to the Commitment Letter (the "**Term Sheet**");

b. authorizing the Debtors to execute and deliver the DIP Credit Agreement (as defined herein) and all agreements, documents, and instruments in respect of the DIP Facility and collateral securing the DIP Facility (collectively with the DIP Credit Agreement, the

"**DIP Loan Documents**") and approving all terms and conditions of the DIP Facility and the DIP Loan Documents;

c. authorizing the Debtors to take all actions necessary, appropriate, or required to comply with the Debtors' obligations under the DIP Loan Documents and the Final DIP Order;

d. granting superpriority administrative expense claim status in the chapter 11 cases, pursuant to section 364(c)(1) of the Bankruptcy Code, in favor of DISH, the lender of the DIP Facility (the "**DIP Lender**");

e. granting a fully-perfected lien, pursuant to section 364(c)(2) of the Bankruptcy Code, on all assets of the Debtors (now existing or hereafter acquired and all proceeds thereof) that were not subject to a perfected, non-avoidable lien as of the date of the filing (the "**Petition Date**") of the chapter 11 cases, immediately junior only to the adequate protection liens (the "**Senior Adequate Protection Liens**") granted to DISH and the Senior Noteholders (as defined herein) pursuant to the *Final Order (A) Authorizing Use of Cash Collateral, (B) Granting Adequate Protection to Certain Prepetition Secured Parties, and (C) Granting Related Relief* [Docket No. 221] (the "**Final Cash Collateral and Adequate Protection Order**"), but senior to all other liens;

f. granting a fully-perfected lien, pursuant to section 364(c)(3) of the Bankruptcy Code, on all assets of the Debtors (now or hereafter acquired and all proceeds thereof) that were, as of the Petition Date, subject to the Permitted Senior Liens (as defined herein), immediately junior to such Permitted Senior Liens and the Senior Adequate Protection Liens, but senior to all other liens; and

g. granting related relief.

Concise Statement Pursuant to Bankruptcy Rule 4001(c) and Local Rule 4001-2

10. In accordance with Bankruptcy Rule 4001(c)(1)(A), the Final DIP Order is attached hereto as **Exhibit A**, and the Commitment Letter and Term Sheet are attached hereto as **Exhibit B**. The Third Lien Secured Super-Priority Debtor-In-Possession Credit Agreement (the "**DIP Credit Agreement**"), pursuant to which the DIP Facility will be provided, will be filed prior to the hearing on the Motion with a supplemental notice that includes all appropriate disclosures, in accordance with Bankruptcy Rule 4001(c) and Local Rule 4001-2.

11. The following chart provides a concise statement and summary of the proposed material terms of the DIP Facility, in accordance with Bankruptcy Rules 4001(c)(1)(B) and Local Rule 4001-2.[4]

Interest Rates Bankruptcy Rule 4001(c)(1)(B)	
Term Sheet p. 6–7	All amounts outstanding under the DIP Facility will bear interest at the rate of 17.00% per annum paid in kind, absent an Event of Default. During the continuance of an Event of Default, the DIP Obligations will bear interest at an additional 2.00% per annum above the interest rate otherwise applicable.

Maturity Bankruptcy Rule 4001(c)(1)(B)	
Term Sheet p. 3	The earliest to occur of: (i) the effective date of the Alternate Plan; (ii) December 31, 2011; provided that such date shall be automatically extended to March 31, 2012 if the End Date (as defined in Section 6.01(a)(v) of the Investment Agreement) is extended to March 31, 2012 pursuant to the terms of the Investment Agreement; (iii) 90 days following payment by the Investor of the Reverse Break-Up Fee under the Investment Agreement (as such terms are defined therein); and (iv) the acceleration of the DIP Loans.

Events of Default Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(10)	
Term Sheet p. 8–12	In addition to other customary events of default, the DIP Facility shall be subject to the following additional events of default: (a) the Final DIP Order (collectively with the Interim DIP Order, as applicable, the "**DIP Orders**") is not entered by the Bankruptcy Court within thirty (30) days after the filing of a motion to approve the DIP Facility; (b) any of the Chapter 11 Cases shall be dismissed or converted to a Chapter 7 case; any superpriority administrative expense claim or lien shall be granted in any of the Chapter 11 Cases without the consent of the DIP Lender, which is *pari passu* with or senior to the Superpriority Claim or the DIP Liens, as applicable; (c) any Loan Party shall file a plan or motion in the Chapter 11 Cases, with respect to any of the DIP Orders, challenging, opposing, reversing, amending, modifying, staying, or vacating any of the DIP Orders, without the prior written consent of the DIP Lender; (d) any Loan Party shall file a motion in the Chapter 11 Cases without the consent of the DIP Lender to obtain additional financing from a party other than the DIP Lender, unless such additional financing provides for the indefeasible repayment in full of the DIP Obligations upon the closing thereof; provided, that, notwithstanding anything to the contrary contained in the Term Sheet or in the DIP Facility after a Reverse Break-Fee Termination if a Reverse Break-Up Fee is paid by way of a Prepetition Credit Agreement Credit (as such terms are defined in the Investment Agreement), DISH (in its capacity as both the DIP Lender and Prepetition Lender) shall be deemed to have consented to any motion seeking additional financing, which may be secured (at the option

[4] Capitalized terms used in the following chart but not otherwise defined herein shall have the meanings ascribed to such terms in the Term Sheet. This statement is qualified in its entirety by reference to the provisions of the Term Sheet. To the extent of any inconsistency between this chart and the Term Sheet, the Term Sheet shall govern.

	of the Loan Parties) (i) in an amount up to but not exceeding $75,000,000 less the amount outstanding under the Prepetition Credit Agreement, after giving effect to the Prepetition Credit Agreement Credit in the amount of up to $25,000,000 (the "**Priming Amount**"), by a lien senior to the DIP Liens, the Prepetition Credit Facility Liens, and the Senior Adequate Protection Liens granted to the Prepetition Lenders under the Final Cash Collateral and Adequate Protection Order, and (ii) to the extent such additional financing exceeds the Priming Amount, by a lien junior to the DIP Liens, the Prepetition Credit Facility Liens, and the Senior Adequate Protection Liens granted to the Prepetition Lenders under the Final Cash Collateral and Adequate Protection Order; (e) any Loan Party shall make any payment of principal or interest or otherwise on account of any prepetition indebtedness or payables, other than as contemplated under the Final Cash Collateral and Adequate Protection Order or payments agreed to in writing by the DIP Lender and authorized by the Bankruptcy Court; (f) the Bankruptcy Court shall enter an order granting relief from the automatic stay to any creditor or party in interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any Loan Party which have an aggregate value in excess of $50,000; (g) an order shall be entered reversing, amending, modifying, staying, or vacating any Initial Order or the order confirming the Alternate Plan (the "**Confirmation Order**", collectively with the Initial Orders, the "**Orders**") or any of the Loan Parties shall apply for authority to do so without the prior written consent of the DIP Lender, or any Order shall otherwise cease to be in full force and effect; (h) any of the Loan Parties shall fail to comply with any Order in any material respect; (i) a chapter 11 trustee, receiver, a responsible officer or an examiner with enlarged powers relating to the operation of the businesses of the Loan Parties shall be appointed in any of the Chapter 11 Cases; (j) any Loan Party shall seek to or support any other person's opposition of any motion made in the Bankruptcy Court by the DIP Lender seeking confirmation of the amounts of the DIP Lender's claim or the validity or enforceability of the DIP Liens; (k) (i) any Loan Party or any of its affiliates shall seek to, or shall support any other person's motion to, disallow the DIP Lender's claims or challenge the validity and enforceability of the DIP Liens or contest any material provision of any DIP Loan Document or (ii) the DIP Liens and/or the Superpriority Claim shall otherwise cease to be valid, perfected, and enforceable or any material provision of any DIP Loan Document shall cease to be effective; (l) (i) the Loan Parties or any of their affiliates file any pleading or proceeding which could reasonably be expected to result in a material impairment of the rights or interests of the DIP Lender and that is not withdrawn within 2 business days after delivery of notice from the DIP Lender to the Borrower requesting withdrawal thereof (unless the hearing or effective date of relief relating thereto is set for less than 2 business days from the date of the notice delivered by the DIP Lender, in which case such pleading or proceeding must be withdrawn at least 24 hours prior to the scheduled date for relief to be granted or the order to the entered) or (ii) entry of an order of the Bankruptcy Court with respect to any pleading or proceeding brought by any other person which results in such a material impairment of the rights or interests of the DIP Lender that is not reversed or vacated within 7 business days after the delivery of notice from the DIP Lender to the Borrower requesting reversal or vacating thereof; (m) any Loan Party files or supports a chapter 11 plan that contains terms and conditions that are inconsistent in any material respect with the Alternate Plan or any exhibit or supplement attached thereto without the prior written consent of the DIP Lender; (n) any Loan Party shall file a motion seeking the entry of, or the Bankruptcy Court shall enter, an order approving a payment to any person on account of any claim under the Alternate Plan (whether in cash or other property or whether as adequate protection, settlement of a dispute, or otherwise) that would be materially inconsistent with the treatment of any such person with respect to such claim under the Alternate Plan, without the prior written consent of the DIP Lender; (o) any judgments which are in the aggregate in excess of $1,000,000 as to any postpetition obligation shall be rendered against any of the Loan Parties and the enforcement thereof shall not be stayed for a period of 30 consecutive days; or there shall be rendered against any of the Loan Parties a non-monetary judgment with respect to a postpetition event which causes or would

	reasonably be expected to cause a material adverse change or a material adverse effect on the ability of the Loan Parties to perform their obligations under the DIP Loan Documents or the value of the DIP Collateral; (p) there shall have occurred any suspension, revocation, cancellation or relinquishment of any Material Communications License (as defined in the Existing DIP Facility) and such event shall continue unremedied or shall not be waived for a period of 30 days; (q) termination of the Investment Agreement pursuant to section 6.01(a)(ii) thereof and such termination continues for 45 days; (r) termination of the Investment Agreement by the Investor (as defined in the Investment Agreement) pursuant to section 6.01(a)(iii) thereof; and (s) termination of the Investment Agreement pursuant to section 6.01(iv) thereof.

Liens and Priorities Bankruptcy Rule 4001(c)(1)(B); Bankruptcy Rule 4001(c)(1)(B)(i); Local Rule 4001-2(a)(4)	
Term Sheet p. 1–3 **Final DIP Order ¶¶ 26, 33**	All of the Debtors' obligations under the DIP Loan Documents shall, at all times: (i) pursuant to Bankruptcy Code section 364(c)(1), be entitled to a superpriority administrative expense claim status in the Chapter 11 Cases (the "**Superpriority Claim**"); (ii) pursuant to Bankruptcy Code section 364(c)(2), have a fully-perfected lien on all assets of the Loan Parties (now existing or hereafter acquired and all proceeds thereof) that were not subject to a perfected, non-avoidable lien as of the Petition Date, immediately junior only to the Senior Adequate Protection Liens on such assets, but senior to all other liens; and (iii) pursuant to Bankruptcy Code section 364(c)(3), have a fully-perfected lien on all assets of the Loan Parties (now or hereafter acquired and all proceeds thereof) that were, as of the Petition Date, subject to Permitted Senior Liens, immediately junior to such Permitted Senior Liens and Senior Adequate Protection Liens, but senior to all other liens.

Borrowing Limits and DIP Commitment Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(1)	
Term Sheet p. 1, 6 **Final DIP Order ¶ 18**	The DIP Facility shall be comprised of a term loan facility in an aggregate principal amount of $87.5 million (the "**DIP Commitment**"). On and after the Closing Date, $50,000,000 of the DIP Facility shall be available to the Borrower. After entry of the Final DIP Order and the occurrence of the Closing Date, the full remaining undrawn amount of the DIP Commitment shall be available to the Borrower in monthly draws subject to compliance with the Budget covenant in the DIP Loan Documents. During such period, each monthly draw shall be in an amount sufficient to provide funding for budgeted expenses and projected professional fees for such month and to maintain $3,000,000 in unrestricted cash.

Borrowing & Closing Conditions Bankruptcy Rule 4001(c)(1)(B); Local Rules 4001-2(a)(2) and 4001-2(h)	
Term Sheet pp. 5–8, Annex I	**Conditions to Closing and Initial Availability** The obligation of the DIP Lender to make the DIP Loans will be subject to satisfaction or waiver of the applicable conditions precedent that follow, and such other conditions as set forth in the Term Sheet: 1. Bankruptcy Matters. (a) The Bankruptcy Court shall have entered the Final DIP Order. (b) The Bankruptcy Court shall have entered the Approval Order. (c) Each of the Initial Orders shall be in full force and effect and no Order shall have been reversed, modified, amended, stayed, or vacated, without prior consent of the DIP Lender. (d) No examiner with increased powers relating to the operation of the businesses of the Loan Parties or trustee shall have been appointed with respect to any of the Loan Parties or their respective properties.

	2. Financial Statements, Budgets and Reports. The DIP Lender shall have received the Budget, which Budget shall be in form and substance satisfactory to the DIP Lender and such other information (financial or otherwise) as may be requested by it. 3. Performance of Obligations. (a) All reasonable costs and expenses (including, without limitation, reasonable legal fees) to be payable to the DIP Lender shall have been paid to the extent previously invoiced and then due and the Loan Parties shall have complied in all material respects with all of their other obligations to the DIP Lender. (b) No Default or Event of Default shall exist. (c) Representations and warranties shall be true and correct in all material respects. (d) The DIP Loan Documents shall have been executed and delivered and the DIP Lender's liens and pledges on the DIP Collateral shall have been perfected to the extent required under the DIP Loan Documents. 4. Customary Closing Documents. The DIP Lender shall be satisfied that the Loan Parties have complied with all other customary closing conditions. 5. Repayment of Existing DIP Facility. The Existing DIP Facility shall be paid in full simultaneously with the initial borrowing under the DIP Facility. **Borrowing Conditions** The conditions to all borrowings will include requirements relating to prior written notice of borrowing, the accuracy in all material respects of representations and warranties (including no material adverse change), the absence of any Default (as defined in the DIP Loan Documents) or Event of Default, no legal bar, and will otherwise be customary and appropriate for financings of this type and acceptable to the DIP Lender. **Budget** Prior to the Closing Date, the Loan Parties shall deliver to the DIP Lender a cash flow budget for the period commencing on or about the Closing Date and ending on March 31, 2012, satisfactory in form and substance to the DIP Lender and showing projected receipts and disbursements for such period, including anticipated uses of the proceeds of borrowings under the DIP Facility (as modified from time to time with the written consent of the DIP Lender, the "**Budget**"). Maximum total cumulative operating disbursements, including contractual capital expenditures but excluding professional fees and expenses, for each monthly test period (on a cumulative basis) shall not exceed the amount set forth in the Budget for such period by more than 10%. Budget covenant and variance reports shall be provided to the DIP Lender on a monthly basis and rolling 13-week cash flow projections shall be provided to the DIP Lender on a bi-weekly basis. The Debtors have reason to believe the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during each financing or budget period.

Adequate Protection Bankruptcy Rule 4001(c)(1)(B)(ii)	
Final DIP Order ¶¶ 4, 20	The Final Cash Collateral and Adequate Protection Order is incorporated into the Final DIP Order by reference in its entirety, except to the extent it is modified or amended by the Final DIP Order.

Waiver or Modifications of Debtors' Rights to File a Plan, Request Use of Cash Collateral, or Request Authority to Obtain Credit Bankruptcy Rule 4001(c)(1)(B)(v)	
Term Sheet p. 9–11	The following Events of Default may modify the Debtors' right to file a plan of reorganization, request use of cash collateral, or request authority to obtain credit (see "Events of Default" above): (c), (d), (g), (l), and (m).

Releases Bankruptcy Rule 4001(c)(1)(B)(viii)	
Final DIP Order ¶ 30	The Final DIP Order provides a release for the DIP Lender and others solely with respect to such parties' activities in their capacity as DIP Lender.

Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	
Term Sheet p. 12 **Final DIP Order ¶ 25**	The Loan Parties shall, jointly and severally, be obligated to indemnify and hold harmless the DIP Lender, and each of its affiliates, officers, directors, fiduciaries, employees, agents, advisors, attorneys, and representatives (each, an "**Indemnified Party**") in accordance with the Term Sheet except to the extent resulting from the gross negligence or willful misconduct of any Indemnified Party as determined by a court of competent jurisdiction in a final non-appealable order.

Fees and Expenses Local Rule 4001-2(a)(3)	
Term Sheet p. 7, 12 **Final DIP Order ¶ 29**	The DIP Loan Documents provide funding protections customary for transactions of this type, including breakage costs, gross-up for withholding (without regard to any change in law), compensation for increased costs and compliance with capital adequacy and other regulatory restrictions. The DIP Loan Documents also provide for reimbursement of all costs and expenses of the DIP Lender, without the necessity of any further application with the Court for approval or payment of such costs or expenses. With respect to the expenses of professionals of the DIP Lender, such professionals shall submit copies of their invoices to the Debtors, the Creditors' Committee, the Ad Hoc Committee, and the U.S. Trustee, and, if no objection is raised to such expenses within five (5) calendar days of the provision of such invoice by the Debtors, the Creditors' Committee, the Ad Hoc Committee, or the U.S. Trustee, the Debtors shall promptly pay such expenses.

Carve-Out Local Rule 4001-2(a)(5); Local Rule 4001-2(d)	
Term Sheet p. 3 **Final DIP Order ¶ 28**	The Superpriority Claim and the DIP Liens shall be subject to payment of the "Carve-Out" (the "**Carve-Out**") specified in paragraphs 15 and 16 of the Final Cash Collateral and Adequate Protection Order and for such purposes the term "Event of Default" under the Final Cash Collateral and Adequate Protection Order shall mean an event of default under the DIP Facility. The DIP Lender shall be entitled to deliver a Carve-Out Trigger Notice as set forth in section 8.02 of the DIP Credit Agreement.

Limitations on Obligations To Fund Certain Activities Local Rule 4001-2(a)(9)

Term Sheet p. 3–5 **Final DIP Order ¶ 18**	The proceeds of the DIP Facility shall be applied to (a) fund certain permitted administrative expenses of the Chapter 11 Cases, (b) repay in full all the obligations under the Existing DIP Facility on the Closing Date, and (c) provide working capital for the Debtors during the pendency of the Chapter 11 Cases, in each case subject to compliance with the Budget covenant in the DIP Loan Documents. Notwithstanding anything to the contrary in the Term Sheet or any other DIP Loan Documents, no proceeds of the DIP Facility, including no portion of the Carve Out (as defined herein), may be used: (a) in any manner that causes or would reasonably be expected to cause the DIP Loans or the application of such proceeds to violate any regulations of the Board of Governors of the Federal Reserve System of the United States, including, without limitation, Regulation T, Regulation U, and Regulation X, or to violate the Securities Exchange Act; (b) for any purpose that is prohibited under the Bankruptcy Code or the Final DIP Order (or Interim DIP Order, as applicable); (c) for the payment of the fees and/or expenses incurred in (i) challenging, or supporting any challenge of, the DIP Obligations, the DIP Liens, the Superpriority Claim, Prepetition Credit Agreement, the Indenture, the Collateral Trust Agreement dated as of August 15, 2005, among ICO Global, the Debtors, and The Bank of New York (n/k/a The Bank of New York Mellon), as collateral agent and as trustee under the Indenture or the Permitted Senior Liens, (ii) the initiation or prosecution of any claim or cause of action against the DIP Lender, or its directors, officers, employees, advisors, agents, successors, and assigns, provided, however, that nothing shall impair or affect the Debtors' rights to enforce the terms of the Final DIP Order (or Interim DIP Order, as applicable) or DIP Loan Documents, (iii) financing in any way (other than any objection to fees being unreasonable): (A) any adversary action, suit, arbitration, proceeding, application, motion, or other litigation of any type against or adverse to the interests of the DIP Lender (or its directors, officers, employees, advisors, agents, attorneys, successors, and assigns) or its rights and remedies under the DIP Facility, the DIP Loan Documents, the Prepetition Credit Agreement, the Indenture, the Collateral Trust Agreement, or the Final DIP Order (or Interim DIP Order, as applicable), including, without limitation, to commence or prosecute or join in any action against the DIP Lender seeking (1) to avoid, subordinate, challenge, or recharacterize the DIP Obligations or the obligations under the Prepetition Credit Agreement, Indenture, or Collateral Trust Agreement or any of the Senior Adequate Protection Liens, Prepetition Liens, or DIP Liens, (2) any monetary, injunctive, or other affirmative relief against the DIP Lender (or its directors, officers, employees, advisors, attorneys, agents, successors, and assigns) or the DIP Collateral in connection with the DIP Loan Documents, the DIP Facility, the Prepetition Credit Agreement, the Indenture, and the Collateral Trust Agreement, (3) to prevent or restrict the exercise by the DIP Lender of any of its rights or remedies under the DIP Loan Documents and DIP Facility; provided, however, that nothing shall impair or affect the Debtors' rights to use proceeds of the DIP Facility to enforce the terms of the Final DIP Order (or Interim DIP Order, as applicable) or DIP Loan Documents; (B) investigating, preventing, hindering or otherwise delaying the DIP Lender's enforcement or realization on the DIP Collateral in accordance with the Final DIP Order (or Interim DIP Order, as applicable), the DIP Facility, or the DIP Loan Documents; (C) seeking to modify any of the rights granted to the DIP Lender under the Final DIP Order (or Interim DIP Order, as applicable), the DIP Facility, or the DIP Loan Documents; (D) actively opposing confirmation or consummation of the Alternate Plan; (E) pursuing confirmation or consummation of a plan of reorganization other than the Alternate Plan, except for actions taken in accordance with the Debtors' fiduciary duties pursuant to section 4.02 of the Investment Agreement or actions taken to pursue a plan of reorganization other than the Alternate Plan after the occurrence of a Reverse Break-Fee Termination (as defined in the Investment Agreement); or (F) any other action which with the giving of notice or the passing of time would result in an Event of Default, in each foregoing case without the DIP Lender's prior written consent; provided, further, however, that nothing in the Term Sheet or in the Final DIP Order (or Interim DIP Order, as applicable) shall prevent the Debtors from paying fees and/or expenses with respect to, nor prosecuting or defending any claim or cause of action (other than in respect of the amount and priority of the claims or the validity, priority and enforceability of the liens in respect of the Prepetition Credit Agreement, Indenture, the Collateral Trust Agreement, the DIP Obligations, and the DIP Liens), with respect to the DIP Lender, including, without limitation,

	exercising any appellate rights in the Chapter 11 Cases; (d) for the payment of fees, expenses, interest, or principal with respect to any prepetition indebtedness (other than pursuant to the Final Cash Collateral and Adequate Protection Order) or as otherwise permitted pursuant to the terms of the DIP Loan Documents; (e) to settle any claim by the allowance of an administrative priority or nondischargeable claim; (f) to make any distribution under a confirmed plan of reorganization in the Chapter 11 Cases (other than pursuant to the Alternate Plan), unless the DIP Obligations are repaid in full in cash on or prior to the effective date of such plan and prior to the distribution on account of any other claim; or (g) for the payment or reimbursement of any third party expenses incurred in connection with any sale, transfer, or other disposition of all or any substantial part of the Debtors' assets (whether pursuant to Section 363 of the Bankruptcy Code or otherwise, a "**Disposition**") or any proposed Disposition, except any Disposition or proposed Disposition pursuant to which the DIP Obligations are to be paid in cash prior to any other obligations of the Debtors; provided, further, however, that nothing in this paragraph shall in any way prejudice or prevent the DIP Lender from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Section 105(a), 330, or 331 of the Bankruptcy Code by any party in interest (and each such order shall preserve the DIP Lender's right to review and object to such requests, motions or applications).

Change of Control Local Rule 4001-2(a)(11)	
Term Sheet p. 8	A change of control constitutes an event of default.

Repayment Local Rule 4001-2(a)(13)	
Term Sheet p. 7	The DIP Facility shall have voluntary prepayment and mandatory prepayment terms that are the same as under the Existing DIP Facility, except as otherwise provided in the Term Sheet. All mandatory prepayments of the DIP Loans are subject to the prior payment in full of the obligations under the Prepetition Credit Agreement and the Senior Notes.

Joint Liability Local Rule 4001-2(a)(14)	
Term Sheet p. 1 **Final DIP Order ¶ 21**	The "**Borrower**" is DBSD North America, Inc., as debtor and debtor in possession in the Chapter 11 Cases that the Borrower and certain of its affiliates have commenced under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Each of the Borrower's direct and indirect subsidiaries is a guarantor of the DIP Obligations (the "**Subsidiary Guarantors**" and, collectively with the Borrower, the "**Loan Parties**").

Background

I. Capital Structure

A. Prepetition Facility

12. On March 27, 2008, DBSD obtained a $40 million revolving credit facility, evidenced by that certain Amended and Restated Revolving Credit Agreement, dated as of

April 7, 2008, by and among DBSD, as borrower, each of DBSD's subsidiaries, as guarantors, Wells Fargo Bank, N.A., as successor administrative agent, the financial institutions and other persons from time to time lenders party thereto (the "**Prepetition Lenders**"), and The Bank of New York Mellon (f/k/a The Bank of New York), as collateral agent (the "**Prepetition Facility**").[5] The Debtors' obligations under the Prepetition Facility are secured by a first-priority security interest in substantially all of the Debtors' assets and by a first-priority pledge of the equity of DBSD by DBSD's parent (subject to certain exceptions) (the "**Prepetition Facility Liens**").

B. Senior Notes

13. In August 2005, DBSD issued $650 million in aggregate principal amount of 7.5% convertible senior secured notes, due August 15, 2009, pursuant to the Indenture, dated as of August 15, 2005, among DBSD, the Debtors, as guarantors, and The Bank of New York (n/k/a The Bank of New York Mellon), as trustee (the "**Indenture Trustee**"), as supplemented by the Supplemental Indenture No. 1 thereto dated as of November 30, 2005, among DBSD, the guarantors party thereto, and the Indenture Trustee and the Supplemental Indenture No. 2 thereto dated as of December 22, 2006, among DBSD, the guarantors party thereto, and the Indenture Trustee (the "**Senior Notes**"). The Senior Notes are secured by substantially all of the assets of the Debtors and by a pledge of the equity of DBSD by DBSD's parent (subject to certain exceptions) (the "**Prepetition Noteholders' Liens**" and, collectively with the Prepetition Facility Liens, the "**Permitted Senior Liens**"). Pursuant to the Collateral Trust Agreement dated as of August 15, 2005, among ICO Global, the Debtors, and The Bank of New York, as collateral

5 On July 9, 2009, all of the claims under the Prepetition Facility were assigned to DISH.

agent and as Indenture Trustee, the Prepetition Noteholders' Liens are junior in priority to the Prepetition Facility Liens.

C. Existing DIP Facility

14. In early 2010, DBSD North America, Inc. ("**DBSD**") obtained a $25 million secured postpetition credit facility (the "**Existing DIP Facility**") pursuant to that certain DIP Credit Agreement, dated as of January 8, 2010, by and among DBSD, as borrower, each of DBSD's subsidiaries, as guarantors, certain holders of the Senior Notes, as lenders (as succeeded from time to time, the "**Existing DIP Lenders**"), and Nexbank, SSB, as administrative agent (as amended, supplemented, and modified from time to time, the "**Existing DIP Credit Agreement**").[6] The Debtors' obligations under the Existing DIP Facility are secured by an interest in substantially all the assets of the Debtors that is junior in priority to the Prepetition Facility Liens (as defined herein) and senior to the Prepetition Noteholders' Liens (as defined herein). Although the Existing DIP Facility was initially scheduled to mature on March 31, 2010, the Existing DIP Lenders have incrementally extended the maturity date through March 28, 2011.[7] The amount outstanding under the Existing DIP Facility is approximately $29.6 million.

II. Chapter 11 Cases

15. On November 23, 2009, approximately six months after the chapter 11 cases were filed, the Court entered the Existing Confirmation Order. Sprint Nextel Corporation ("**Sprint**") and DISH appealed the Existing Confirmation Order to the District Court on numerous grounds, and, on March 24, 2010, after full briefing and oral argument, the District Court affirmed the

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6 See Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing on a Second Lien, Secured Superpriority Basis and (B) Granting Related Relief [Docket No. 592].

7 See Amendment No. 18 to that Certain Secured Super-Priority Debtor-in-Possession Credit Agreement Dated as of January 8, 2010 [Docket No. 889].

Existing Confirmation Order. Sprint and DISH further appealed the Existing Confirmation Order (the "**Appeals**") to the Second Circuit, and, on August 5, 2010, the Second Circuit heard oral arguments.

16. On September 29, 2010, the Federal Communications Commission ("**FCC**") authorized the Debtors to transfer certain communications licenses upon consummation of the Original Plan, but, on October 5, 2010, after emergency briefing by the parties, the Second Circuit entered an order staying consummation of the Original Plan pending the outcome of the Appeals (the "**Stay Order**").

17. On December 6, 2010, the Second Circuit entered an order: (a) reversing, in part, the District Court's decision affirming the Existing Confirmation Order, on grounds that certain provisions of the Original Plan violate the absolute priority rule; (b) remanding the Appeals to the District Court for further remand to this Court; and (c) vacating the Stay Order. The Second Circuit order also indicated that it would issue an opinion in due course.

18. On January 6, 2011, the Debtors filed the Modified Plan, which had been revised to address the anticipated concerns of the Second Circuit, and the Modified Plan Motion. On January 13, 2011, the Bankruptcy Court held a status hearing at which the Debtors and their constituents discussed, among other issues, the anticipated Second Circuit opinion, the appropriate briefing and hearing schedule for the Modified Plan Motion, and the Debtors' increasingly perilous cash position.

19. To date, the Debtors have financed the chapter 11 cases with proceeds from the sale of their student-loan-backed auction rate securities,[8] cash collateral,[9] and the Existing DIP

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8 See Debtors' Motion for Entry of an Order Approving the Sale of Certain of the Debtors' Auction Rate Securities for Cash Free and Clear of Liens, Claims, Interests, and Encumbrances and Granting Related Relief [Docket No. 82].

9 See Final Cash Collateral and Adequate Protection Order.

Facility. When the Debtors obtained the Existing DIP Facility, they anticipated that the FCC would approve transfer of the Debtors' FCC licenses within six months, and the Debtors negotiated the terms of the Existing DIP Credit Agreement and related documents, including the maturity date and the principal amount of the Existing DIP Facility, accordingly. Due to unforeseen delays in the FCC process, the Appeals, and the reversal of the Existing Confirmation Order, however, the Debtors have been unable to consummate the Original Plan and emerge from bankruptcy. Furthermore, the Debtors' cash position has deteriorated as a result of extraordinary delays in the chapter 11 cases, and the Debtors' remaining liquidity is insufficient to fund the Debtors' operations and the administrative expenses of the estates beyond March 2011.[10] Accordingly, the Debtors must secure additional postpetition financing to have sufficient liquidity to operate their business and administer the chapter 11 cases until they can emerge from bankruptcy.

20. The Debtors' ability to obtain additional postpetition financing is handicapped by the substantial amount of secured debt on the Debtors' books—more than $800 million—and by their lack of any significant unencumbered assets. Further, although the Debtors could attempt to seek additional postpetition financing from a third party, the Debtors and their advisors believe that any such lenders would require that their liens prime—at a minimum—the Prepetition Noteholders Liens. However, the holders of the Senior Notes (the "**Senior Noteholders**") are unlikely to consent to the priming of their liens, and, without such consent, the outcome of any contemplated priming of the Prepetition Noteholders' Liens by postpetition liens is uncertain.

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[10] Although the Existing DIP Lenders recently committed to provide an additional $10 million in postpetition financing under the Existing DIP Facility pursuant to Amendment No. 18 to that Certain Secured Super-Priority Debtor-in-Possession Credit Agreement Dated as of January 8, 2010 [Docket No. 889], subject to Court approval, such additional financing may be insufficient to pursue the Modified Plan and is insufficient to pursue the Alternate Plan.

21. DISH, the Prepetition Lender, has agreed to provide the Debtors with replacement postpetition financing on a junior secured basis, in conjunction with a new money investment pursuant to the Investment Agreement. The DIP Facility offered by DISH will be secured by liens junior to the Permitted Senior Liens and the Senior Adequate Protection Liens. The DIP Facility will enable the Debtors to pursue the Alternate Plan and thereby provide the Debtors' creditors with greater recoveries than they would have received under the Modified Plan. The DIP Facility and the Investment Agreement are the result of extensive negotiations with DISH with the objective of reaching a financial restructuring of the Debtors.

22. The DIP Facility provides the Debtors with a sufficient runway to consummate the Alternate Plan. Specifically, the DIP Facility will allow the Debtors to pay off the Existing DIP Facility, will provide the Debtors with sufficient cash flow through the process of proposing, soliciting, and confirming the Alternate Plan, and will provide the Debtors with a liquidity cushion should the process (and, in particular, securing FCC approval) take longer than anticipated. Further, the Alternate Plan will pay the Senior Noteholders in cash in full with accrued interest—a recovery that is substantially greater than under the Modified Plan—and will provide all creditors with a greater recovery than under the Modified Plan. Accordingly, the Debtors believe that entry into the DIP Facility, in connection with their support of the Alternate Plan, is in the best interests of their estates and their stakeholders as a whole and is consistent with the exercise of their fiduciary duties.

III. Financing the Remainder of the Chapter 11 Cases

A. Use of Cash Collateral

23. The Debtors will continue to operate under and use cash collateral pursuant to the Final Cash Collateral and Adequate Protection Order.

B. DIP Facility

24. In accordance with the terms and conditions of the Commitment Letter and the Term Sheet, the DIP Lender has agreed to provide the DIP Facility in an aggregate amount of up to $87.5 million, to be made available in two tranches on the terms set forth above. On or after the date the Bankruptcy Court enters the Final DIP Order and once the other conditions precedent set forth in the DIP Loan Documents are satisfied or waived, as determined by the DIP Lender, $50 million of the DIP Facility shall be made available to the Debtors. In addition, the full remaining undrawn amount of the DIP Facility shall be available to the Debtors in monthly draws, subject to compliance with the Budget (as defined in the Term Sheet) covenant in the DIP Loan Documents. During such period, each monthly draw shall be in an amount sufficient to provide funding for budgeted expenses and projected professional fees for such month and to maintain $3 million in unrestricted cash.

25. The Debtors believe the amounts available under the DIP Facility are sufficient to finance the remainder of the chapter 11 cases.

Basis for Relief

26. As set forth above, without the DIP Facility, the Debtors will be forced to pursue the Modified Plan in lieu of the Alternate Plan, notwithstanding that the Alternate Plan will provide enhanced recoveries for all of the Debtors' creditors. Further, for the reasons set forth below, the Debtors submit that they have satisfied the requirements to access postpetition financing on a third lien, secured, superiority basis pursuant to section 364 of the Bankruptcy Code.

I. Entry into the DIP Amendment Is an Exercise of the Debtors' Sound Business Judgment.

27. A debtor's decision to obtain postpetition financing under section 364 of the Bankruptcy Code is governed by the business judgment standard. See, e.g., In re Barbara K. Enters., Inc., Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); Trans World Airlines, Inc. v. Travelers Int'l AG (In re Trans World Airlines, Inc.), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment" of the debtors); In re Ames Dep't Stores, Inc., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (noting that financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment). Generally, the business judgment standard requires that, absent evidence to the contrary, a debtor in possession is afforded discretion to act with regard to business planning activities. See In re Simasko Prod. Co., 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("[D]iscretion to act with regard to business planning activities is at the heart of the debtor's power.") (citations omitted).

28. To determine whether the business judgment standard is met, a court is required "to determine whether a reasonable business person would make a similar decision under similar circumstances."In re Helm, 335 B.R. 528, 538–39 (Bankr. S.D.N.Y. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code.") (internal citation omitted).

29. The Debtors' decision to enter into the DIP Facility is an exercise of their sound business judgment that warrants approval by this Court. This decision is inextricably linked to the Debtors' assessment of the proposed terms of the Alternate Plan and their determination that pursuing the Alternate Plan—which the Debtors cannot possibly do in the absence of replacement financing—is in the best interests of their estates and all parties in interest. The Debtors negotiated the DIP Loan Documents in good faith and at arm's length to obtain the additional postpetition financing they require on the most favorable terms available, and, prior to evaluating the need for replacement financing under the DIP Facility, the Debtors and their advisors undertook a detailed investigation as to the Debtors' plan options and their projected financing needs for the remainder of the chapter 11 cases. The Debtors' decision to enter into the DIP Facility is the culmination of a thorough analysis of the best possible financing available under all of the circumstances. Based upon the advice of the Debtors' advisors and the Debtors' own analysis, the Debtors have determined in their sound business judgment that the DIP Facility provides financing on more favorable terms than any other reasonably available and viable alternative.

30. The DIP Facility will provide the Debtors sufficient liquidity to repay the Existing DIP Facility, to fund operations, and to administer the chapter 11 cases while the Debtors pursue the Alternate Plan, a plan that provides a higher recovery for the Debtors' secured and unsecured creditors.[11] Conversely, without access to the DIP Facility, the Debtors will be compelled to forego the benefits that would accrue to their estates, their constituents, and their business from the Alternate Plan and instead pursue a plan of reorganization that will provide the Debtors' creditors with a lower recovery. Accordingly, the Debtors submit that entering into the DIP

[11] The Debtors estimate that the DIP Facility will provide up to approximately 15 months of liquidity, after repayment of the Existing DIP Facility.

Loan Documents is necessary to the preservation of estate assets, is in the best interests of the Debtors' estates and their creditors, and, as such, represents an exercise of the Debtors' sound business judgment.

II. The Court Should Authorize the Debtors to Obtain the DIP Facility on a Third Lien, Secured and Superpriority Basis.

31. Section 364 of the Bankruptcy Code enables a debtor to obtain, in certain circumstances, postpetition financing on a senior secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

32. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) ("The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable."); Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp., 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense).

Particularly when few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing."In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); see also Ames Dep't Stores, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

33. The Debtors are unable to procure sufficient financing in the form of unsecured credit allowable as an administrative expense under section 503(b)(l) of the Bankruptcy Code or solely as an administrative expense under section 364(b) of the Bankruptcy Code, and the DIP Loan Documents offer the most favorable financing available to the Debtors at this time. As a result, the Court should: (a) authorize the Debtors to provide to the DIP Lender fully-perfected liens on the Debtors' property that was not subject to a perfected, non-avoidable lien as of the Petition Date, junior only to the Senior Adequate Protection Liens but senior to all other liens, pursuant to section 364(c)(2); (b) authorize the Debtors to provide to the DIP Lender fully-perfected liens on the Debtors' property that is subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date, junior to the Permitted Senior Liens and the Senior Adequate Protection Liens but senior to all other liens, pursuant to section 364(c)(3) of the Bankruptcy Code; and (c) grant the Debtors' repayment obligations under the DIP Loan Documents superpriority administrative expense status, pursuant to section 364(c)(1) of the Bankruptcy Code.

III. The Interests of the Secured Lenders Are Adequately Protected.

34. The Debtors are only required to provide adequate protection to the holders of liens senior to the DIP Facility to the extent that such liens are "primed" by the DIP Facility. See 11 U.S.C. § 364(d)(1)(B). Here, the liens securing the DIP Facility will be junior to both the Prepetition Facility Liens and the Prepetition Noteholders' Liens. As such, the Prepetition Lender and the Senior Noteholders are not entitled to any additional adequate protection other than that provided pursuant to the Final Cash Collateral and Adequate Protection Order.

IV. The DIP Lender Should Be Accorded the Protections of Section 364(e) of the Bankruptcy Code.

35. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and the lender's rights in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

36. The DIP Loan Documents are the result of arm's length and good faith negotiations between the Debtors and the DIP Lender and a result of the Debtors' reasonable and informed determination that the DIP Facility offers the most favorable terms on which to obtain replacement postpetition financing. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Furthermore, no consideration is being provided to any

party to, or guarantor of, obligations arising under the DIP Facility, other than as described therein and in the Investment Agreement. Finally, amounts under the DIP Facility are being extended in express reliance upon the protections offered by section 364(e). Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

V. Modification of the Automatic Stay Is Warranted.

37. The DIP Loan Documents and the Final DIP Order contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Lender to exercise, upon the occurrence and during the continuation of any Event of Default (as defined in the DIP Credit Agreement), all rights and remedies provided for in the DIP Credit Agreement, and to take various other actions without further order of or application to the Court. The DIP Credit Agreement and the DIP Loan Documents, however, will provide that, except as otherwise provided therein, the DIP Lender must provide the Debtors with five (5) business days' prior written notice before exercising any enforcement rights or remedies, which will allow the Debtors to seek an expedited hearing before the Court for the purpose of determining whether, in fact, an Event of Default has occurred and is continuing.

38. Stay modification provisions of this sort are ordinary features of DIP facilities and, in the Debtors' business judgment, are reasonable under the circumstances. See, e.g., In re DBSD N. Am., Inc., Case No. 09-13061 (REG) (Bankr. S.D.N.Y. Dec. 16, 2009); In re Reader's Digest Ass'n, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Oct. 6, 2009), In re Lear Corp., Case No. 09-14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009); In re Gen. Growth Props. Inc., Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 14, 2009); In re Tronox Inc., Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009); In re Chemtura Corp., Case No. 09-11233

(REG) (Bankr. S.D.N.Y. Apr. 23, 2009); In re Wellman, Inc., Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Apr. 7, 2008).

39. Accordingly, the Debtors respectfully submit that modification of the automatic stay as set forth herein is appropriate under the circumstances.

Notice

40. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the official committee of unsecured creditors; (c) counsel to DISH; (d) counsel to the ad hoc committee of Senior Noteholders; (e) all known Senior Noteholders; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; and (h) the parties in interest who have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002 and the Local Rules. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

41. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of the Final DIP Order: (a) authorizing the Debtors to obtain replacement postpetition financing pursuant to the DIP Loan Documents; and (b) granting related relief.

New York, New York
Dated: February 1, 2011

/s/ *Ryan Blaine Bennett*

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